Supreme Court, U.S.
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No. _____

In The

Supreme Court of the United States

October Term, 2000

EMELIANO NISCO,

Petitioner,

v.

TOWN OF PERINTON,

Respondent.

On Petition for a Writ of Certiorari to the New York State Court Of Appeals

PETITION FOR A WRIT OF CERTIORARI

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THE DAILY RECORD

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QUESTIONS PRESENTED

1. Whether the law enacted by respondent Town of Perinton (the "Town") regulating RVs (the "RV Law") unconstitutionally takes petitioner's pre-existing use of his property to store a recreational vehicle ("RV").

2. Whether the RV Law is a valid exercise of the police power consistent with due process.

PARTIES TO THE PROCEEDING

The parties to this proceeding are listed in the caption. Concerned Citizens of Perinton, Inc. ("CCOP") and the Town of Perinton Zoning Board of Appeals (the "ZBA") were also parties (petitioner-appellant and respondent-respondent, respectively) in the Appellate Division of the Supreme Court of the State of New York, but are no longer involved in this case.

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No. ____

In The
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OCTOBER TERM, 2000

EMELIANO NISCO, *Petitioner,*

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TOWN OF PERINTON, *Respondent*

On Petition for a Writ of Certiorari to the New York Court of Appeals

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PETITION FOR A WRIT OF CERTIORARI

OPINIONS BELOW

The summary opinions of the New York Court of Appeals (App., *infra*, 1a-2a), denying review are reported at ___ N.Y.2d ___, ___ N.Y.S.2d ___ (1999) and 93 N.Y.2d 1040, 697 N.Y.S.2d 567 (1999). The opinion of the Appellate Division of New York Supreme Court, Fourth Judicial Department (the "New York Appellate Division") (App., *infra*, 3a-4a), is reported at 261 A.D.2d 880, 689 N.Y.S.2d 812 (4th Dep't 1999). The opinion of Supreme Court, Monroe County (App., *infra*, 5a-6a), is not reported.

JURISDICTION

The judgment of the New York Court of Appeals denying review of the opinion of the Appellate Division of New York Supreme Court was entered on December 20, 1999. The jurisdiction of this Court is invoked under 28 U.S.C. §1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case arises under the Fifth and Fourteenth Amendments to the United States Constitution. The Fifth Amendment provides, in part, that "[n]o person shall... be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation." The Fourteenth Amendment applies these guarantees to the states, providing, in part, that "[n]o state... shall any state deprive any person of life, liberty, or property, without due process of law."

This case involves the constitutionality of the Perinton RV Law, Chapter 140 of the Perinton Town Code, as enacted by Local Law No. 4 of 1997, which is set forth at App. 11a.

STATEMENT

In this case, this Court is asked to review the constitutionality of municipal legislation which summarily extinguished the right to continue storing recreational vehicles in front yards, and application of that law to petitioner's legal pre-existing, nonconforming use.

A. Procedural Background

Petitioner Emeliano F. Nisco ("Nisco" or "petitioner") and CCOP brought this action in New York Supreme Court, Monroe County, seeking the annulment of the RV Law, and the denial to Nisco of a special permit under that law for his motor home (the "Motor Home").

In his initial pleadings, Nisco claimed that respondent Town unconstitutionally deprived him of property without compensation or due process of law by failing to grandfather the Motor Home that was already legally situated on his property (the "Property"), and that the Town lacked authority to enact the RV Law. Paragraph 54 of his Amended Petition claimed that "[p]ursuant to the right to due process under the Fifth and Fourteenth Amendments to the United States Constitution, actionable under 42 U.S.C. §1983... pre-existing, non-conforming uses must be allowed to continue in operation, at least to the extent of the remainder of their useful life." In addition, Amended Petition ¶¶65 and 66 stated that since "[t]he RV Law has no substantial relationship to public health, safety or general welfare, and is beyond the police power of the Town.... the RV Law should be declared unconstitutional."

Nisco also claimed that the ZBA acted illegally, arbitrarily and capriciously in denying his application for a special permit to maintain for his pre-existing RV on his Property.

New York State Supreme Court Justice Eugene W. Bergin denied petitioner's claims, holding that the Town's RV Law was a reasonable exercise of the Town's police powers when applied prospectively, and that because the RV Law was not a zoning law, but rather a "regulatory" ordinance, there was no

need to grandfather pre-existing, nonconforming uses. Furthermore, Judge Bergin held that the ZBA properly denied a special permit to Nisco.

On May 7, 1999, the New York Appellate Division modified the lower court's decision by annulling the determination upholding the denial of Nisco's special permit application, remitting the special permit issue to the ZBA "for redetermination of the application and, if it is so advised, to issue a permit subject to special conditions," but otherwise affirmed. On the questions of law at issue on this Petition, the Appellate Division held that the RV Law was "a reasonable exercise of the [Town of Perinton 's] police powers," and that Nisco's prior nonconforming use to maintain the Motor Home in his driveway was not "constitutionally protected" from application of the RV Law.

On June 28, 1999, the ZBA held a rehearing on appellant's application for a special permit, and again denied the permit. Nisco brought a second action in New York Supreme Court, *Nisco v. Town of Perinton*, Monroe County Index No. 99-7861, to complain of the permit denial, and Judge Bergin again dismissed his case. This second case is now on appeal to the New York Appellate Division.

Petitioner also sought review from the New York Court of Appeals of the New York Appellate Division's Decision with respect to the validity of the RV Law and the grandfathering issue. Since the Court of Appeals refused to hear the case, Nisco has exhausted his avenues of review of this case in the New York courts.

B. The Nisco Motor Home

In about July, 1986, Nisco purchased the Nisco Motor Home for approximately $35,000, and he has parked it in his driveway since that time. It is 10 feet, 8 inches tall, and 24 feet long. For the first two years he owned the RV, petitioner parked it on the side of his driveway. In 1988, he expanded his driveway at the cost of approximately $1,200, so that an area on the side was established for parking his motor home.

At that time, Nisco made an inquiry with the Town, and he was advised that he did not need a permit for expansion of his driveway. While Nisco asked if he could install vegetative screening on the boundary of the Nisco Property, he was informed by the Town that screening would be illegal if it was over three feet high, so he could not do so. Nisco has parked the Nisco Motor Home in the expanded area on the side of his driveway since 1988.

It is not feasible to park the Motor Home at either the side or the rear of the Property, since those areas are obstructed by trees and other features, and his side yard is too narrow to feasiblely drive his motor home through. In addition, Nisco, who is elderly, has been unable to find anywhere near his home to park his Motor Home.

C. The RV Law

The RV Law[1] was enacted in 1997, and regulates

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[1] The RV Law was originally contained in Perinton Town Code Chapter 140, which is cited in this Petition. It was later recodified as Chapter 201.

recreational vehicles, which are defined as including "[a]ny vehicle used for recreational purposes, including all terrain vehicles, boats, boat trailers, camper trailers, jet skis, motorcycles, motor homes, snowmobiles." Section 140-2. Section 140-4 of the RV Law imposes numerous restrictions on RVs, including the following:

A. RVs cannot be stored outside on a public property for more than 24 hours. §140(A).

B. No more than one RV, which must be less than 9 feet tall and less than 20 feet in length, may be stored on a driveway, and no storage is permitted closer than 20 feet from the public street, or on the rest of a front yard. §140-4(B).

C. RVs can only be stored in side yards if space requirements are met, including an 8 foot screen. §140-4(C).

D. RVs can only be parked in a rear yard if specified restrictions are met, including an 8 foot screen. §140-4(D).

E. Only two RVs can be stored outside of a building on any lot containing a dwelling unit, and only one of those vehicles can be greater than 9 feet tall or 20 feet long, unless the lot is greater than five acres. §140-4(E).

F. An RV can only be stored unlicenced for up to six months. §140-4(F).

G. Visitors can only sleep in an RV for up to nine days. §140-4(G).

However, pursuant to §140-4(H), relief may be granted

from the private property restrictions set forth in §140-4(B, C, D and E) of the RV Law if a special permit is granted by the ZBA. The RV Law does not contain any specific exemption for non-conforming, pre-existing uses.

REASONS FOR GRANTING THE PETITION

The state court decisions in this case are inconsistent with this Court's takings decisions. This Court should grant *certiorari* to clarify that the Town has gone beyond constitutional limits on taking of property by eliminating petitioner's non-conforming use, and has unconstitutionally justified its legislation with irrelevant purposes.

I. THE PRE-EXISTING MOTOR HOME IS CONSTITUTIONALLY PROTECTED AS A NONCONFORMING USE.

Under New York law, "nonconforming uses or structures, in existence when a zoning ordinance is enacted, are, as a general rule, constitutionally protected and will be permitted to continue, notwithstanding the contrary provisions of the ordinance." *People v. Miller*, 304 N.Y.2d 105, 107 (1952); *see also Matter of Syracuse Aggregate Corp. v. Weise*, 51 N.Y.2d 278, 287, 434 N.Y.S.2d 150 (1980). Thus, a zoning or other regulation that confiscates a landowner's vested rights in continuing a previously legal land use is unconstitutional. *See Toys R Us v. Silva,* 89 N.Y.2d 411, 417, 654 N.Y.S.2d 100, 103 (1996); *Lutheran Church in America v. City of New York*, 35 N.Y.2d 121, 359 N.Y.S.2d 7 (1974); *People v. Miller*, 304 N.Y.2d 105 (1952); 1 Anderson, *New York Zoning Law and Practice* (3d ed.) §6.05.

According to this Court, "while property may be regulated to a certain extent, if regulation goes too far it will be recognized as a taking." *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393, 415, 43 S.Ct. 158 (1922). The Takings Clause is "'designed to bar Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole." *Armstrong v. United States*, 364 U.S. 40, 49, 80 S.Ct. 1563 (1960).

To determine whether a taking has occurred, the Court must consider: (1) the economic impact of the regulation on the claimant; (2) the extent to which the regulation has interfered with distinct investment-backed expectations, and (3) the character of the governmental action. *Penn Central Transp. Co. v. City of New York*, 438 U.S. 104, 124, 98 S.Ct. 2646, 2659 (1978).

Where a regulation goes too far, and destroys investment-backed expectations, this Court has found a taking. In *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393, 415, 43 S.Ct. 158 (1922), the statute prohibited coal mining coal that caused subsidence of a house. Since the law made it commercially impracticable to mine the coal, the measure unconstitutionally took mining rights without compensation. Likewise, in *Armstrong v. United States*, 364 U.S. 40, 80 S.Ct. 1563 (1960), the destruction of a lien was compensable as a taking.

In contrast, in *Penn Central Transp. Co. v. City of New York*, 438 U.S. 104, 124, 98 S.Ct. 2646 (1978), the property owner was allowed to continue the use it had already established. Cases like *Miller v. Schoene*, 276 U.S. 272, 48 S.Ct. 246 (1928) involve extinguishment of a nuisance. While this is not a case like *Lucas v. South Carolina Coastal Council*,

505 U.S. 1003, 112 S.Ct. 2886 (1992), where all "economically viable" use of the property has been taken, any viable right of Nisco to use his RV parking area, or to use his Motor Home in any convenient manner, have been confiscated.

In this case, the RV Law eliminates the right of Nisco to use the extra lane on his driveway to park his Motor Home, and makes it impractical for him to use and enjoy the RV. Before the law was enacted, he could spend his free time working on his RV, and could conveniently use the Motor Home for a trip with his wife (or in a winter storm when he lost power, as has happened on more than one occasion). Under the law, even if he can find a place to store the RV, he must pay large storage fees, and then travel many miles in a second vehicle to reach it.

The factors described in *Penn Central* lead to the conclusion that there has been a taking. Nisco has invested $35,000 in his RV, and $1,200 in his driveway -- clearly a substantial investment that he expected to be able to enjoy for as long as he owned the Property. Moreover, the Town has not acted to eliminate a nuisance, but only to try to beautify residential neighborhoods. By not grandfathering pre-existing uses, the Town has crossed the constitutional line.

Nisco's Motor Home has been maintained on the Nisco Property for over a decade, at a substantial cost. To terminate this use would be a taking.

II. THE RV LAW IS NOT A VALID EXERCISE OF THE POLICE POWER.

In addition, due process is violated when a land-use regulation "does not substantially advance legitimate state

interests." *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003, 1016, 112 S.Ct. 2886, 2894 (1992). Where municipal action is not "reasonably related" to its "proffered justifications," it violates due process. *City of Monterrey v. Del Monte Dunes*, 119 S.Ct. 1624, 1637 (1999).

The stated purpose for the RV Law is to "promote safe vehicular traffic, to preserve peace and good order, to promote the aesthetic beauty of the community, and hence the value of the property therein; and to promote the health, safety and general welfare of the citizens." However, the true purpose of the law does not match the stated intent.

The RV Law has no health and safety effects on the community whatsoever. The Perinton Town Code already required that an RV be parked a certain distance away from the street. Even if that setback should be lengthened, there is no rational safety reason for totally prohibiting RVs from front yards, and limiting them to side and back yards. Thus, the RV Law does not increase the safety for the community. There are no health effects that can be claimed to be affected or improved by the RV Law. RVs have no impact on "peace and good order."

The only portion of the law's purposes that even respondents argue is addressed is the "promot[ion] the aesthetic beauty, and hence the value of property." Thus, out of about seven goals, the RV Law is irrelevant to all but one. For this reason alone, it is inconsistent with due process.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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MARCH 2000

APPENDIX

State of New York
Court of Appeals

DECISION December 20, 1999

4-14 Mo. No. 1320

In the Matter of Concerned
Citizens of Perinton, Inc.,
Petitioner,
and Emeliano F. Nisco,
Appellant,
v.

Town of Perinton And Town of
Perinton Zoning Board of Appeals,
Respondents.

Motion for leave to appeal denied with one hundred dollars costs and necessary reproduction disbursements.

State of New York
Court of Appeals

DECISION September 14, 1999

Mo. No. 1153 SSD 48

In the Matter of Concerned
Citizens of Perinton, Inc.,
Petitioner,
and Emeliano F. Nisco,
Appellant,
v.

Town of Perinton And Town of
Perinton Zoning Board of Appeals,
Respondents.

Appeal dismissed without costs, by the Court sua sponte, upon the ground that no substantial constitutional question is directly involved.

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

(521) CA 98-8000. (Monroe Co.) -- MATTER OF CONCERNED CITIZENS OF PERINTON , INC., PETITIONER-APPELLANT, ET AL., PETITIONER, V TOWN OF PERINTON AND TOWN OF PERINTON ZONING BOARD OF APPEALS, RESPONDENTS-RESPONDENTS. -- Judgment unanimously modified on the law and as modified affirmed without costs and matter remitted to respondent Town of Perinton Zoning Board of Appeals for further proceedings in accordance with the following Memorandum: In this hybrid declaratory judgment action/CPLR article 78 proceeding, petitioners seek judgment declaring chapter 140 of the Perinton Town Code null and void to the extent that it regulates the storage of motor homes and other recreational vehicles, and annulling the determination of respondent Town of Perinton Zoning Board of Appeals (ZBA) denying the application of petitioner Emeliano F. Nisco for a special permit to store his recreational vehicle in his driveway. Supreme Court properly concluded that the challenged ordinance is "a reasonable exercise of the [Town of Perinton 's] police powers" (*see, Matter of Suddell v. Zoning Bd. of Appeals*, 36 N.Y.2d 312, 315) and that Nisco's prior nonconforming use is not "constitutionally protected" from the operation of the ordinance (*see, Town of Plattekill v. Dutchess Sanitation*, 56 A.D.2d 150, affd 43 N.Y.2d 662). The record, however, fails to support the court's further conclusion that the ZBA's denial of Nisco's application for a special permit is rational and based upon substantial evidence. Because the ZBA failed to articulate the reasons for its determination, we modify the judgment by

annulling the determination upholding the denial of Nisco's application for a special permit, and we remit the matter to the ZBA for redetermination of the application and, if it is so advised, to issue a permit subject to special conditions (*see, Matter of Carcuro v. Madigan*, 124 A.D.2d 294,296). (Appeal from Judgment of Supreme Court, Monroe County, Bergin, J. - CPLR art 78.) PRESENT: DENMAN, P. J., GREEN, PIGOTT, JR., SCUDDER AND CALLAHAN, JJ. (Filed May 7, 1999.)

STATE OF NEW YORK
SUPREME COURT COUNTY OF MONROE

CONCERNED CITIZENS OF PERINTON, INC.
and EMELIANO F. NISCO,

Petitioners,

Index No. 97/12069

vs.

TOWN OF PERINTON and TOWN OF PERINTON
ZONING BOARD OF APPEALS,

Respondents.

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BERGIN, J. Petitioners bring this special proceeding pursuant to CPLR Article 78 and 3001, General Municipal Law §51, and Town Law §274-b (a), requesting the Court to annul and declare null and void Chapter 140* of the Perinton Town

Code as amended by Local Law 44 of 1997. The parties herein have stipulated that the Amended Petition dated December 8, 1997 shall serve as the Plaintiff's "complaint", and Defendant Town of Perinton need only respond to the above referenced amended Petition. Petitioners are also requesting the Court annul the denial of a Special Permit by the Town of Perinton Zoning Board of Appeals which directed Petitioner Nisco to remove his motor home which has been parked on the driveway at his property since 1986.

In the Spring of 1996, a number of residents of the Town of Perinton came to the Town Board asking for an ordinance regulating the storage of recreational vehicles. The residents who approached the Town were concerned about safety issues caused by the location of large recreational vehicles in the front setbacks, as well as aesthetic issues caused by the size of the vehicles. A law prohibiting the storage of recreational vehicles over 20' on a private drive was passed in August of 1996 with no public opposition. However, in September, a number of recreational vehicle owners did come to the Town Board and ask it to reconsider its vehicle storage law. The Town Board. agreed and set up a committee of Town staff and community members who were on both sides of this issue to work on a new vehicle storage law. A draft law was prepared in April of 1997 and hearings were ultimately held in June and July. The new vehicle storage law was passed in July, 1997. The new storage law was in part, modeled after the ordinance from the Village of Larchmont, which the Court of Appeals upheld in 1975. Suddell v. The Zoning Board of Appeals, 36 NY 2nd 312, 367 NYS2d 766.

Essentially, the Town of Perinton's new ordinance prohibited the parking of recreational vehicles over 20' in a

private drive for more than nine consecutive days. The Town's purpose was to get the larger recreational vehicles moved to the side or rear of homes so that they would have less visual impact on neighbors and would not block lines of sight for residents driving by or pulling, out. Of their driveways. Recreational vehicles up to 35' in length could be stored in the side or rear yards next to the house or garage with some screening.

If a resident was unable to comply with the requirements of the storage law, then he or she had the right to apply for a special permit. Special permit requirements are set forth in Section 148-94 of the Perinton Code. To date, 16 of the 18 requests for special permits have been granted to applicants for special permits for recreational vehicle storage.

Those residents who owned recreational vehicles prior to the new storage ordinance were not "grandfathered" by the new ordinance. Prior ownership of recreational vehicles is one of the factors which the Zoning Board of Appeals has considered, but that factor by itself is not determinative. Mr. Nisco made application for his special permit on September 2, 1997. His hearing was held on October 27, 1997. Mr. Nisco's application was denied because the Zoning Board of Appeals determined that he failed to meed the criteria for a special permit. This lawsuit followed, with the. Town of Perinton being sued by both Mr. Nisco and CCOP which was formed by a group of recreational vehicle owners who were displeased with the Town's vehicle storage law.

The Respondents stipulate in their Memorandum of law dated February 12, 1998 that the subject ordinance is a regulating ordinance under its police powers, and NOT (Emphasis added) a Zoning ordinance where the Petitioner(s) are entitled to be

"grandfathered" if they owned a recreational vehicle prior to the enactment of the Perinton ordinance.

"It is the law of this State that nonconforming uses, or structures, in existence when a zoning ordinance is enacted, are, as a general rule, constitutionally protected and will be permitted to continue, notwithstanding the contrary provisions of the ordinance." People v. Miller, 304 NY 105, 107 (1952).

Characterizing the ordinance as regulatory rather than zoning precludes Petitioner Nisco from asserting a nonconforming use which is, although "grudgingly tolerated" is constitutionally protected in the State of New York. Matter of Pelham v. The Board of Trustees, 77 NY2nd 67, 71. Since the subject ordinance is not a zoning ordinance the Zoning Board of Appeals would appear to lack jurisdiction to deny the granting of a special permit to Petitioner Nisco. Shank v. Town of Dryden 195 AD2d 858. *See also,* Town Law §267-c(4).

However, a Zoning Board of Appeals may be delegated original review authority with respect to certain permit applications such as special permits. This power is not found in Town Law §267a, but may be delegated to a Zoning Board of Appeals in the Town's Zoning Law. Town Law §267(a) Cumulative Pocket Part 1997 - 1998, Practice Commentaries pg. 100).

It is the Court's finding that the Town of Perinton's Vehicle Storage Law is a reasonable exercise of the town's police powers when applied prospectively. Suddell v. Zoning Board of Appeals, 36 NY2d 312, 367 NYS2d 766. Petitioner's application pursuant to Article 78 of the CPLR seeking to declare the ordinance null and void is dismissed. Also, the Court

finds the Perinton Zoning Board of Appeals had jurisdiction to deny Petitioner Nisco's Special Permit Application, Town Law §267(4), and that the Board's decision had a rational basis and was supported by substantial evidence. Holmes v. Caravetta, 140 AD2d 980, 529, NYS2d 652 (4th Dept. 1988).

Dated: Rochester, New York
April 1, 1998

ENTER:

Honorable Eugene W. Bergin
New York State Supreme Court Justice

* The Town of Perinton changed the numerical sequence of the ordinances contained in their Town Code, effective February 2, 1998. For purposes of clarity and consistency, this decision reflects the various numbered sections provided by counsel prior to the above mentioned change.

PERINTON TOWN CODE

CHAPTER 140 VEHICLES, OUTSIDE STORAGE & PARKING OF

Sec. 140-1. LEGISLATIVE INTENT

Sec. 140-2. DEFINITIONS

Sec. 140-3. ABANDONED, UNINSPECTED, UNLICENSED, INOPERATIVE, DISCARDED OR JUNKED VEHICLES

Sec. 140-4. STORAGE OF RECREATIONAL VEHICLES

Sec. 140-5. OUTSIDE STORAGE OR PARKING OF COMMERCIAL OR CONSTRUCTION VEHICLES

Sec. 140-6. OUTSIDE PARKING OF LICENSED VEHICLES

Sec. 140-7. STORAGE ON VACANT PROPERTY

Sec. 140-8. SERVICE OF NOTICE FOR REMOVAL

Sec. 140-9. TIME LIMIT FOR REMOVAL AFTER NOTICE

Sec. 140-1. INTENT.

The purpose of this local law is to regulate the outdoor parking and storage of automobiles, recreational vehicles, boats, trailers

and other vehicles. This local law is adopted to safe vehicular traffic, to preserve peace and good order, to promote the aesthetic beauty of the community and hence the value of the property therein; and to promote the health, safety and general welfare of the citizens of the Town of Perinton.

See- 140-2. DEFINITIONS.

As used in this chapter, the following terms have the meanings indicated:

ABANDONED, UNINSPECTED, UNLICENSED, INOPERATIVE, DISCARDED OR JUNKED VEHICLES

A. Any vehicle that is:

1. Without a current inspection sticker or license, except as excluded in Section 140-4. F of this code, or

2. Being held or used for the purpose of resale of used arts therefrom or for the purpose of reclaiming for use some of the materials therein for the purpose of disposing of the same, or

3. Wrecked, discarded, dismantled, or

4. In such a condition as to cost more to repair and place in operating condition than its reasonable market value after such repair, or

5. Left unattended for more than forty-eight (48) hours on property of another, if left without permission of the property owner.

B. With respect to any vehicle not required to be licensed or not usually used on the public highways, the- fact that such vehicle has remained unused for more than six (6) months and is not in condition to be removed under its own power shall be presumptive evidence that such vehicle is an abandoned, junked, and or inoperative vehicle.

C. The fact that a vehicle does not display a current motor vehicle registration, license plate or inspection sticker, except as excluded in Section 140-4-F of this code, shall be presumptive evidence that such vehicle is not in any condition for legal use upon the highways.

ANTIQUE OR CLASSIC AUTO - A motor vehicle owned and operated as an exhibition piece or collectors item, not used for daily transportation and manufactured more than twenty five years prior to the current calendar year

BOAT- A vessel capable of carrying one (1) or more people and intended for use on the water specifically distinguished.

BUILDING- A permanent, essentially box-like structure having a roof and enclosing walls complying with the New York State Building Code. As used in this chapter the word "building" refers to principal buildings and accessory buildings unless specifically distinguished.

CAMPER/RECREATIONAL VEHICLE (RV)- A motorized, self-propelled vehicle containing sleeping and other facilities for habitation.

COMMERCIAL VEHICLE- Any licensed vehicle used in conjunction with any business or trade, with the exception of the

automobile of a salesman, professional person or the like.

CONSTRUCTION VEHICLE- A commercial vehicle customarily used in the construction trades, including but not limited to vehicles used for excavation and moving of earth and vehicles used for hauling construction materials.

DRIVEWAY- An asphalt, concrete, crushed stone or other hard surface, generally constructed between the road and a garage or dwelling used for parking of vehicles.

DWELLING- A building designed or used as living quarters for one (1) or more families.

FAMILY- One (1) or more persons occupying the premises and living as a single housekeeping unit.

MOTORCYCLE, SNOWMOBILE, ATV, JET-SKI. Unenclosed motorized vehicles having seats or saddles for the use of riders.

PARK or PARKING- The standing of a vehicle, whether occupied or not, on public or private property outside of a building.

PERSON- Any person, firm, partnership, association, corporation, institution, or organization of any kind.

RECREATIONAL VEHICLE- Any vehicle used for recreational purposes, including all terrain vehicles, boats, boat trailers, camper trailers, jet skis, motorcycles, motorhomes, snowmobiles.

SEMI-TRACTOR- A short truck with a body containing only a

cab for the driver, used to haul commercial, detachable trailers.

SEMI-TRACTOR-TRAILER- A combination trucking unit consisting of a tractor arid a trailer or semi-trailer.

SEMI-TRAILER- A detachable trailer for hauling commercial freight, having its forward end supported by the rear of its truck tractor when attached.

STORAGE- The parking of a licensed vehicle for a period in excess of nine (9) consecutive days, unless otherwise restricted. The parking of an unlicensed vehicle for any period of time, except as exempted herein. The incidental movement of a vehicle on or off the property shall not affect the calculation of the nine (9) day time period.

TRAILER, BOAT- A trailer intended for the purpose of moving boats from place to place.

TRAILER, CAMPER- A trailer containing sleeping, and other facilities for habitation and intended to be towed or carried by another vehicle.

TRAILER, UTILITY- A trailer generally used for the hauling of miscellaneous household and yard materials.

VEHICLE- A machine or vessel propelled by other than human power, designed to travel along the ground or water by use of wheels, treads or other mechanical means to transport persons or property or pull machinery, and shall include without limitation, automobiles, trucks, camper/rv, tractors, trailers, motorcycles, boats and wagons.

VEHICLE HEIGHT- A vehicle height will be determined by measuring from the ground surface to the top of the vehicle, as stored.

VEHICLE LENGTH- A vehicle length will be determined by the physical measurement of the outside dimension of said vehicle, i.e. a boat will be measured from the bow to the stem, a camper/rv will be measured from bumper to bumper, a utility trailer or camper trailer will be measured front to rear excluding the trailer tongue, a boat trailer will be measured from the rear to the point of the bow support excluding the tongue.

YARD, FRONT -

1. The area between that part of an existing structure nearest the street line and the street line, bounded on each side by the side lines of the lot.

2. On comer lots, those areas between the part of each exterior wall of an existing structure nearest each street line abutting said lot, and said street lines bounded by the other street and the side line most closely parallel to said other street line shall each be the "front yard".

YARD, REAR-

1. That area between that portion of an existing structure nearest the rear line of the lot and said rear line, bounded on both sides by the side lines of said lot.

2. On comer lots, that area between that part of an existing structure nearest each side line which has the larger amount of square feet shall be considered the “rear yard”.

YARD, SIDE- That area between that part of an existing structure and the side line of each lot provided that said line is not also a street line.

Sec. 140-3. ABANDONED, UNINSPECTED, UNLICENSED, INOPERATIVE-, DISCARDED OR JUNKED VEHICLES.

The outside storage of abandoned, uninspected, unlicensed, inoperative, discarded or junked vehicles on privately owned properties within the Town of Perinton is a source of annoyance to members of the public and to owners and occupants of adjacent land. The outdoor storage of such vehicles on private property is unsightly and constitutes an attractive nuisance to children and a peril to their safety. This legislation is intended hereby to protect public health and safety, and to curb the deterioration of the community environment.

A. No property shall be used for the outside storage of abandoned, uninspected, unlicensed, inoperative, dismantled, partially dismantled, discarded or junked vehicles except as may be otherwise permitted in this code.

B. No dismantled, partially dismantled or parts of vehicles shall be stored outside on any property within the Town, except as otherwise permitted within this code.

C. No person shall abandon any vehicle within the Town of Perinton and no person shall leave any vehicle at any place within the Town for such time and under such circumstance as to reasonably cause such vehicle to appear to have been abandoned.

Sec. 140-4. OUTSIDE STORAGE OF RECREATIONAL VEHICLES.

A. No recreational vehicle shall be stored outside at any place in the Town on public property, or parked outside on public property for more than twenty four (24) hours.

B. One recreational vehicle, less nine (9) feet in height and less than twenty (20) feet in length may be stored on the driveway, no closer dm twenty (20) feet from the public street, however, no storage is permitted in the rest of the front yard area.

C. A recreational vehicle may be stored in the side yard provided that it shall:

1) be stored parallel to and adjacent to the structure and,

2) not exceed the dimension of the structure plus six (6) feet or a maximum of thirty five (35) feet, whichever is less, and,

3) be provided with either an evergreen screening or a solid fence eight (8) feet high, planted or installed between the vehicle and the property line. Plantings shall be planted a minimum of four (4) feet high and be allowed to grow and be maintained a minimum of eight (8) feet high and,

4) be setback a minimum of four (4) feet from the property line.

D. A recreational vehicle may be stored in the rear yard provided that it shall:

1) be stored parallel to and adjacent to the structure and,

2) not exceed the dimension of the structure plus six (6) feet or a maximum of thirty five (35) feet whichever is less, and,

3) be provided with either an evergreen screening or a solid fence eight (8) feet high, planted or installed between the vehicle and the property line. Plantings shall be planted a minimum of four (4) feet high and be allowed to grow and be ed a minimum of eight (8) feet high and,

4) meet the applicable setbacks.

E. A maximum of two (2) recreational vehicles may be stored outside of a building on any lot containing a dwelling unit. Only one such vehicle may be equal to or greater than nine (9) feet in height or twenty (20) feet in length. Such vehicles must be owned or leased by the property owner or the property tenant, except that:

On lots of five (5) acres or larger, the option shall exist that both of the two (2) allowed recreational vehicles may be equal to or greater than nine (9) feet in height or twenty (20) feet in length. Additionally, on such lots, one such vehicle may be owned or leased by someone other than the property owner. Recreational vehicles stored on such lots shall be

stored in the rear yard area within the applicable setbacks.

F. A recreational vehicle may be stored unlicensed, in accordance with Section 4-B, 4-C, 4-D and 4-E above, for a period of time not to exceed 6 months.

G. No camper/rv, camper trailer or boat shall be used for residential purposes, except that visitors with such vehicles may sleep in them for a period not to exceed nine (9) days.

H. A Special Permit may be granted by the Zoning Board of Appeals in accordance with Section 148-94 to allow relief from the requirements found in 4-B, 4-C, 4-D and 4-E above. These permits may be granted for a defined time period, as determined by the Zoning Board of Appeals.

I. The storage of recreational vehicles defined herein or the granting of Special Permits defined herein shall not preempt existing tract restrictions or restrictive covenants.

J. Visitor Permits may be granted by the Director of the Building Department, for a time period not to exceed 16 days each, to allow for relief from the requirements found in 4-G above to allow for the extended stay of visitors.

Sec. 140-5. OUTSIDE STORAGE OR PARKING OF COMMERCIAL OR CONSTRUCTION VEHICLES

A. No commercial or construction vehicle of any length shall be stored outside on any public property within the Town for a period in excess of 8 hours, unless used in conjunction with construction on said property.

B. No commercial vehicle having an overall length in excess of twenty (20) feet, semi-tractor, semi-tractor-trailer, semi-trailer or construction vehicle of nor any length shall be parked on any public or private property in a residential district unless temporarily in connection with a bona-fide commercial service, sales, or delivery to such property.

C. A commercial vehicle which is not a semi-tractor, semi-tractor-trailer, semitrailer or construction vehicle having an overall length of twenty (20) feet or less, may be parked or stored outside on private property in a residential district subject to the following regulations:

1. Only one (1) such vehicle per family may be parked or stored on any lot containing the dwelling of such family.

2. Such vehicle shall only be parked or stored on the driveway or in the garage.

3. The parking or storage of such vehicle shall be in fall compliance with the requirements with Section 148-42 of this Code and shall not preempt the use of space needed for the off-street parking of other vehicles.

4. Such vehicle shall belong to an owner or

occupant of the premises upon which it is being parked or stored.

Sec. 140-6. OUTSIDE PARKING OR STORAGE OF LICENSED VEHICLES.

A. Licensed and inspected vehicles parked or stored outside on private property not otherwise regulated in Section 140-3 or Section 140-4 of this code shall be either:

1. Parked on a driveway surface, or

2. Parked in the rear yard area, within the applicable setbacks and as close

3. Parked in the side yard, as close to the garage as practicable, provided that it is no closer than four (4) feet from the property line.

B. Licensed vehicles parked on public property shall be parked consistent with Section 142-15 (Vehicles and Traffic) and so as not to create a hazard, impede the flow of traffic and emergency vehicles or create a nuisance to adjacent properties. The determination of hazard, impedance or nuisance shall be made by the Director of the Building Department, the Commissioner of Public Works or their designees. In instances of imminent danger the vehicle shall be removed immediately by the owner or shall be removed by the Town at the owner's expense.

Sec. 140-7. STORAGE ON VACANT PROPERTY.

No vehicle shall be parked or stored on any privately owned

vacant property in a residential district.

Sec. 140-8. SERVICE OF NOTICE FOR REMOVAL.

Any notice of violation of the provisions of this code not corrected shall be served pursuant to Chapter 80, Enforcement Procedures, of the Town Code.

Sec. 140-9. TIME LIMIT FOR REMOVAL AFTER NOTICE.

A. No person in charge or in control of any property within the Town, whether as owner, occupant, tenant or otherwise, shall allow any violations to this provision of the Town Code longer than seven (7) days after notice is given to such person by the Director of the Building Department or his designee.

B. The Director of the Building Department, the Commissioner of Public Works or their designees are authorized to remove and dispose of, or have removed or disposed of, any abandoned, uninspected, unlicensed, inoperative, discarded or junked vehicles, or stored vehicles within a street or highway right of way, on public property, or on private property with the consent of the property owner (where no other alternative is available).